Portland Cement Association

September 12, 2005

U.S. Environmental Protection Agency
EPA West (Air Docket)
Room B108, Mail Code 6102T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attention: E-Docket ID No. OAR-2004-0094

**RE: National Emissions Standards for Hazardous Air Pollutants for Source Categories: General Provisions; Proposed Rule**

Dear Sir/Madam:

The Portland Cement Association (PCA) appreciates the opportunity to comment on the above referenced proposed rule which was published in the *Federal Register* on July 29, 2005 (70 Fed. Reg. 43992). Cement manufacturers are subject to a national emission standard for hazardous air pollutants (NESHAP) under 40 CFR Part 63; consequently, the association is quite interested in any potential changes to NESHAP rules and regulations.

The Portland Cement Association is a trade association representing cement companies in the United States and Canada. PCA's U.S. membership consists of 45 companies operating 106 plants in 35 states and distribution centers in all 50 states servicing nearly every Congressional district. PCA members account for more than 95 percent of cement-making capacity in the United States and 100 percent in Canada.

Portland cement is the powder which acts as the glue or bonding agent that, when mixed with water, sand, gravel and other materials, forms concrete. Cement is produced from various naturally abundant raw materials, including limestone, shale, clay and silica sand. Portland cement is an essential construction material and a basic component of our nation’s infrastructure. It is utilized in numerous markets, including the construction of highways, streets, bridges, airports, mass transit systems, commercial and residential buildings, dams, and water resource systems and facilities. The low cost and universal availability of portland cement ensure that concrete remains one of the world’s most essential and widely used construction materials.

In 2002, PCA filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit challenging a startup, shutdown and malfunction (SSM) reporting provision promulgated in an April 5, 2002 rule. The Agency subsequently entered into a settlement agreement with the Sierra club regarding the April 2002 rule. The Agency then proposed changes to the SSM requirements in

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December 2002 (67 Fed. Reg. 72875) and promulgated the changes in May 2003 (68 Fed. Reg. 32586).

PCA commented on the changes proposed by the Agency in December 2002, and was generally pleased with the outcome detailed in the May 2003 rule. The Agency has now, pursuant to a challenge to the May 2003 rule by the Natural Resources Defense Council, proposed to make additional modifications to the NESHAP SSM requirements. PCA's views on the proposed changes are summarized below and elaborated upon herein.

- PCA agrees with the Agency's view that startup, shutdown and malfunction (SSM) plans are not "applicable requirements." Facilities are, therefore, not obliged to implement the plans during SSM periods, though they are required to follow the NESHAP general duty provisions.

- PCA agrees that, as SSM plans are not part of Title V permits, facility owner and operators are not obliged to provide them to permitting authorities unless required to do so pursuant to a request under Section 114(a) of the Clean Air Act.

- PCA supports the changes proposed for SSM recordkeeping requirements designed to ensure that they conform with changes made to associated reporting requirements in May 2003.

## I. SSM Plans are Not Applicable Requirements under Title V, are Not Part of a Title V Permit, and Need Not be Implemented during SSM Events

PCA believes that the Agency has correctly interpreted that the general duty clause outlined under Section 63.6(e)(1)(i) compels facilities subject to NESHAP to make every effort to minimize emissions during SSM events. The SSM plan is a tool to be used by a facility to facilitate compliance with this general duty. Thus, it is appropriate that facilities be allowed considerable flexibility to make the plans as detailed as is appropriate and also allow them to be modified as necessary to address plant modifications and/or operational changes.

While SSM plans are required to be developed pursuant NESHAP requirements, the plans are not applicable requirements under Title V and are therefore not part of a facility's operating permit. Even though facilities are not obliged to implement SSM plans, they are required to minimize emissions to the greatest extent possible, pursuant to the general duty clause and will, therefore, generally follow the criteria outlined in the SSM plans.

Nevertheless, PCA believes that, even though SSM plans are not applicable requirements, facilities that implement the provisions of adequate plans during SSM events should be deemed to be in compliance with their general duty obligation. PCA

believes that this should hold true even if, at some later date, it is determined that emission limitations were exceeded during an SSM event. In sum, a plant that dutifully implements a thorough SSM plan during an SSM event should not later be deemed out of compliance with the general duty clause if emissions limitations were exceeded.

## II. SSM Plans Need Not be Provided to Permitting Authorities

As explained above, SSM plans are not applicable requirements under Title V, are not part of Title V permits and, therefore do not have be included in permits filed with federal, state and local authorities. This will encourage the development of "evergreen" (constantly updated) and thorough plans. On the contrary, plans made available to permit authorities and the public would be much less detailed, less frequently updated and void of any confidential or sensitive information to protect the competitive interests of the facility, thus making the documents much less useful to a facility owner and operator when responding to an SSM event.

If the plans are requested pursuant to an information collection request authorized under Section 114(a) of the Clean Air Act, PCA agrees that they would then become available to the public along with other documents and materials solicited through the information request.

## III. The Proposed Changes to the SSM Recordkeeping Requirements are Appropriate

In May 2003, EPA promulgated changes to the SSM reporting requirements, which obliged facilities subject to NESHAP to report on certain SSM events. The changes proposed by EPA on July 29 are designed to make the recordkeeping provisions under Section 63.10 conform with reporting provisions promulgated by EPA in 2003. The records kept by NESHAP facilities are used to complete any necessary SSM reports and it is sensible to construct the requirements such that facilities will record the information necessary to facilitate completion of the associated reports. The changes proposed by EPA, while minor, accomplish this end. The most notable change is a clarification regarding startup and shutdown recordkeeping which limits these records to those events that may have resulted in an exceedance of emissions standards. This is an appropriate change and compliments the reporting provisions.

Thank you for providing PCA with the opportunity to comment on these proposed changes to the NESHAP general provisions. I would be delighted to address any questions you may have regarding the cement industry's views. I may be reached at (202) 408-9494.

Sincerely,

Andrew T. O'Hare

Andrew T. O'Hare
Vice President